

Filed for intro on 02/01/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House Bill No.HB0144  
By Herron

AN ACT to amend Tennessee Code Annotated, Title 23, Chapter 3, relative to attorney contact with prospective clients.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 23, Chapter 3, Part 1, is amended by adding the following appropriately numbered new section:

(a) As used in this part, unless the context otherwise requires:

(1) "Attorney" means an individual licensed to practice law in Tennessee or in any other jurisdiction.

(2) "Representative of an attorney" means any person acting in any manner or in any capacity for an attorney.

(3) "Solicit" means direct, private contact with a prospective client by means further defined in subsections (c) and (d).

(4) "Professional employment" means any agreement, written or oral, authorizing an attorney to perform legal services for pecuniary gain.

(5) "Prospective client" means any person, including an individual, corporation, firm, company, or association.

(6) "Family member" means an individual's parent, grandparent, sibling, child, spouse, spouse's parent, spouse's grandparent, spouse's sibling or spouse's child.

(7) "Recorded communication" means any telephone or videotape contact that is not live.

(b) An attorney, or a representative of an attorney, may not, by in person or live telephone contact, solicit professional employment from a prospective client unless:

(1) The prospective client is a family member; or

(2) The prospective client is a former client and the advice is relevant to former employment.

(c) An attorney, or a representative of an attorney, may solicit professional employment from a prospective client by written or recorded communication or as allowed under subsection (b) unless:

(1) the attorney, or representative of the attorney, knows or should reasonably know, that the physical, emotional, or mental state of the person is such that the person could not exercise reasonable judgment in employing an attorney; or

(2) the communication uses coercion or duress to motivate the prospective client; or

(3) the communication contains a false, fraudulent, misleading, or deceptive statement or claim. A statement or claim is false, fraudulent, misleading or deceptive if it:

(A) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered as a whole, not materially misleading;

(B) is likely to create an unjustified expectation about results the lawyer can achieve; or

(C) compares the attorney's services with other attorney's services, unless the comparison can be factually substantiated.

(e) It is a Class B misdemeanor to violate subsection (b) on the first offense. A second or subsequent violation of subsection (b) is a Class A misdemeanor. It is a Class C misdemeanor to violate subsection (c) on the first offense. A second or subsequent violation of subsection (c) is a Class B misdemeanor.

SECTION 2. Tennessee Code Annotated, Section 23-3-201, is amended by deleting subsections (1) and (2) in their entirety, substituting instead the following and renumbering the subsequent subsections accordingly:

(1) Commits any infamous crime, any misdemeanor involving moral turpitude, or any other crime involving improper conduct as an attorney.

SECTION 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 1995, the public welfare requiring it.